

DEPARTMENT OF STATE REVENUE

Revenue Ruling ST-98-03

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

(a) **Sales/Use Tax - Varying Retail Price For Different Types Of Remuneration**

(b) **Authority** IC 6-2.5-1-2(a),8; IC 6-2.5-2-1,2; IC 6-2.5-4-1; 45 IAC 2.2-4-1,2.

(c) The taxpayer requests the Department to rule on the application of the Sales/Use tax to an extra charge added to the cost of taxpayer's product for those customers who wish to pay with a check.

STATEMENT OF FACTS

The taxpayer is a corporation that owns and operates pizza places offering both carryout and delivery in the state of Indiana. Taxpayer accepts checks as a form of remuneration in exchange for pizza. Taxpayer has determined that accepting checks can cause an increase in its cost of doing business. For this reason, taxpayer is considering raising the price of pizza to offset the cost, but only charging this additional fee to customers who write checks. Taxpayer is inquiring as to whether or not Indiana's Sales/Use tax applies to this fee.

DISCUSSION

IC 6-2.5-2-1 imposes a gross retail tax on retail transactions in the state of Indiana. The retail merchant, as defined by IC 6-2.5-1-8, is required to collect that tax. Taxpayer is a retail merchant and the selling of pizza by this taxpayer to its customers is a retail transaction under Indiana law. The question to be answered is whether the gross retail tax applies to the extra fee charged by the taxpayer to those customers wishing to pay by check.

Taxpayer, in its request for a ruling, has characterized the extra fee as a "service charge" and implies that the fee is for some distinct service provided. Taxpayer queries about the effect of separately stating the fee on the receipt, as if this would be dispositive in defining the fee as a "service charge." Examining the transaction itself will however be the determining factor.

Taxpayer accepts checks. When working with checks, there is a risk that the check will be returned unpaid for a variety of reasons. This is a cost of doing business. Taxpayer also intimates that there is a cost associated with "processing" checks, however, outside of depositing the check into a bank account, the Department can find no other "processing" that takes place. The act of simply accepting a check as a form of remuneration does not equate with providing a service.

The transaction that occurs is that an individual orders a pizza. The cost of the pizza is X number of dollars if the customer is paying with cash. If the customer wishes to pay by check the cost of the pizza is X plus the additional fee. If a taxpayer wants a pizza and wants to pay with a check, then the customer must pay the higher price. Just because the price of the product varies, depending on the type of remuneration being used, does not mean that the difference between the higher and lower price, the fee for paying by check, is not subject to sales tax.

Taxpayer is simply passing on an anticipated cost of doing business to those customers who potentially would cause them to incur additional expense. The taxpayer's costs are higher for those customers who write checks, therefore the price of pizza is higher for those customers as well. This is a retail unitary transaction and, under IC 6-2.5-2-2, the tax is measured by the gross retail income received by the taxpayer.

RULING

The Department rules that varying the retail price of a product based on the type of remuneration does not involve providing a service. In addition, the Department rules that the entire price of the pizza, the lower one for using cash and the higher one for using a check, is subject to the Gross Retail Tax in Indiana.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.